IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 901 to 976 of 2000
with
FIRST APPEAL No 6362 to 6425 of 1999
with
CROSS OBJECTIONS No 60 to 71 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

STATE OF GUJARAT

Versus

PATEL KANTIBHAI KHUMABHAI

Appearance:

First Appeals No. 901 to 950 of 2000
MR ARUN D OZA GOVERNMENT PLEADER for Appellant
MR RN SHAH with MR MUNSHI & MR SANJAY R PATEL
for Respondents

First Appeals No.951 to 976 of 2000
MR AY KOGJE ASSTT GOVT PLEADER for Appellant
MR RN SHAH with MR MUNSHI & MR SANJAY R PATEL
for Respondents

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 14/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

All these appeals arise from the common judgment dated 30.6.1999 with awards in a group of land acquisition reference cases No.830 to 905 of 1992 with Reference No.890 of 1992 as the main land reference case wherein evidence was led by the parties.

2. We have already set out the relevant facts in our judgment dated 9.12.2004 in First Appeal No.865 to 900 of 2000.

3. Having heard the learned advocates for the parties, we are of the view that since the lands of the same village are acquired under the same notification for the same public purpose, it is not necessary to dilate all over again on determination of market value of the lands in question. The valuation of the lands on the date of acquisition as Rs.350/- per Are adopted by the Reference Court in this group is just and proper. However, we find considerable substance in the grievance made by the learned Government Pleader that the Reference Court has applied the same rate of Rs.350/- per Are for all the lands under acquisition without making any distinction between the irrigated land, non-irrigated land and waste land. For taking the view that no such distinction is required to be made, the Reference Court has relied upon the decision of this Court in GUJARAT STATE v. PATEL NATVARLAL KHODIDAS reported in 1998 (1) GLH (UJ) 17. We find that the said judgment was concerned with acquisition of bagayat and jirayat lands and, in the facts of that case, the Court appears to have taken the view that there was no material for making such distinction. In fact, the judgment is not fully reported but only certain paragraphs of that judgment are reported. Paragraphs 6 to 9 as reproduced therein are mere reproductions of the arguments of learned counsel for the parties. The finding of the Court is in paragraph 12 which is reported. We are, therefore, not in a position to hold that the aforesaid decision of this Court has laid down any such principle that no distinction is required to be made between irrigated

land, non-irrigated land and waste land while determining the market value of the lands under acquisition.

4. In view of the above discussion and having regard to the fact that the Land Acquisition Officer had awarded Rs.150/- per Are for irrigated land, Rs.112.50 ps. per Are for non-irrigated land and Re.1/- per Are for waste land and having regard to the fact that we have determined the market value of irrigated land at Rs.350/per Are, the additional compensation payable to the claimants shall be worked out on the basis of the aforesaid discussion and if any amount is paid in excess, the same shall be refunded to the Government. If any amount is short-paid, then the Government shall pay the amount to the claimants. Since the compensation awarded by the Land Acquisition Officer was Rs.150/- per Are for irrigated land and Rs.112.50 ps. per Area for non-irrigated land, which means, there is 25% difference in the value of the amount, while applying the rate of Rs.350/- per Are, proportionate reduction of 25% will have to be made for determining the market value of non-irrigated land. As far as waste land is concerned, we are shocked to find that the Reference Court has determined the market value of the waste land at Rs.350/- per Are and has awarded additional compensation of Rs.349/- per Are. However, we are informed that the areas of waste land acquired from individual farmers are comparatively small and the amount of additional compensation awarded to them by the Reference Court is also in the region of Rs.1,000/- to Rs.2,000/- and even with payment of solatium and interest, the additional amount paid to such farmers, who are owners of waste land, in pursuance of the award of the Reference Court has not exceeded Rs.30,000/-. For the waste land, the rate may be determined @ Rs.50/- per Are.

5. The appeals filed by the Government are allowed in the aforesaid terms. The cross appeals filed by the claimants and the cross-objections filed by the claimants are hereby dismissed. In the facts of the case, there shall be no order as to costs in all these appeals.

6. At this stage, the learned counsel for the claimants prays for stay of operation of this judgment in order to enable the claimants to have further recourse in accordance with law.

The learned Government Pleader opposes this prayer.

7. In the facts of the case, the claimants are

granted time upto 31.1.2005 to refund the amounts in accordance with the directions given in this judgment. As far as the amounts lying with the Reference Court are concerned, no withdrawal shall be made by the Government till 31.1.2005. In view of this order, there is no need to stay the operation of this judgment.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)